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Trial Time Running Out

Westmoreland's Side May Not Call CBS' Wallace

By Eleanor Randolph
Washington Post Staff Writer

NEW YORK, Dec. 19—After almost three months of retired Army general William C. Westmoreland's \$120 million libel trial against CBS Inc., his lead attorney, Dan Burt, acknowledged today that he may not have time to call four key CBS witnesses, including reporter/narrator Mike Wallace.

U.S. District Court Judge Pierre N. Leval, who has given each side 150 hours to present its case, said after meeting privately with lawyers today that he had been concerned that Burt might not be "well in control of the time budget" and feared that either side might try to ask for an extension in the trial, which began in October and is expected to last four to five months.

Burt has used approximately 102 hours, and CBS about 79 hours, according to CBS attorneys.

The time constraint facing him appears to be the latest difficulty in a rough two

weeks for Burt in his first case before a jury.

At issue is a 1982 CBS documentary charging that Westmoreland was part of an alleged conspiracy to keep higher enemy-troop figures from his superiors during the Vietnam war.

Burt, president of the Capital Legal Foundation, a public-interest law firm funded by conservatives, accidentally opened the door Dec. 6 for former secretary of defense Robert S. McNamara to be questioned about Vietnam, a subject McNamara had avoided talking about publicly for almost 16 years.

McNamara, whose testimony lasted a full day, had been scheduled to appear on the stand briefly, primarily as a character witness for Westmoreland.

And in another action, Leval last week denied Burt use of most of an internal CBS report laying out the flaws in the documentary, "The Uncounted Enemy: A Vietnam Deception."

Finally, Burt's first "hostile" witness from the CBS team, George Crile, producer of the documentary, thus far has taken twice the time the prosecution had budgeted for him. With his essay-style answers to Burt's questions, Crile has used more than 20 hours of Burt's time.

Said one CBS lawyer: "You do not ever ask a hostile witness a question that starts with the word 'why.' It gives him a chance to explain his side of the case."

Moreover, Burt, who is up against the Wall Street firm of Cravath, Swaine & Moore in this case, seemed to have difficulty when he turned from a series of witnesses supporting Westmoreland to Crile, the first witness requiring the techniques of cross-examination.

During Crile's second day on the stand, for example, Leval repeatedly blocked Burt's questions, often as Burt was working up a level of indignation about how Crile had edited a section of the 90-minute broadcast.

What might have been dramatic moments were disrupted, first by CBS lawyer David Boies, who peppered the court with objections to Burt's questions; then by Leval, who occasionally recast Burt's efforts or chastised him about a line of inquiry the judge found confusing or out of line.

After one long, difficult exchange, Leval told Burt out of the jury's hearing: "I have found this examination very confusing . . . I'm really quite at a loss as to what the facts are that you are seeking to bring out."

By Crile's second day on the stand, Burt seemed to have regained some of his composure. Moreover, Boies' objections were increasingly denied by Leval.

As the clock runs down on Burt, he has said he is dropping two CBS witnesses, thought to be Howard Stringer, executive vice president of the network's news division, and Andrew Lack, executive producer for the CBS Reports documentary unit that made the show at issue.

Burt also has said he is "seriously considering" not calling two codefendants—Samuel Adams, a consultant on the documentary, and Wallace—to testify.

Boies has said he expects to call Wallace and Adams when CBS presents its side of the case, beginning next month.

CBS attorneys said they have been told that Burt also has abandoned plans to call Westmoreland's wife to the stand.

The trial recessed today for two weeks.

*Special correspondent John Kennedy
contributed to this report.*